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A new system and legal regulation of administrative punishment in the Czech Republic

Abstract: This paper focuses on the new legal regulation that came into effect on 1.07.2017. This represents a relatively new approach to punishment realized by the administrative bodies. The new legal regulation has changed the system of administrative delicts itself as well as practice of administrative bodies. Not only in Poland, where there was a newly-adopted new legal regulation in the Administrative Code (KPA), but also in the Czech Republic, we can see how the phenomenon of administrative punishment is becoming important and is an important part of the functioning of public administration. This paper would like to analyze important changes as well as some questions that the new legal regulation in the Czech Republic has brought.

Keywords: administrative delict, administrative punishment, administrative bodies.

1. “Administrative punishment” and its relevance to public administration

The unrelenting attention given in the Czech Republic to administrative punishment (and its legal basis — criminal administrative law) is based upon the fact that it constitutes a significant area of public administration or of the competence of public administration. To put it simply, it is typical for administrative punishment that it is entrusted to public administration (i.e., the attribute of “administrative”) and enables public administration and its bodies (so-called administrative

bodies¹) to punish² ascertained illegal actions (delicts) which, however, are not crimes, or do not reach the level of the societal harmfulness of crimes.

The basis for administrative punishment is the comprehensive category of the so-called administrative offenses, which will be elaborated upon further in this text. Administrative punishment may be encountered both in the area of self-government,³ as well as on the state administration level.

The said power to punish is a significant element that enables the specification and supplementation of the individual defining characteristics of public administration. This is traditionally included as a specific component of executive power. The focus of its activity consists in implementing the contents of laws in connection with the administration of public affairs. However, that is by no means an exhaustive description of public administration. That is because, in the case of public administration, implementing the contents of laws also consists in the issuing of “its own” legal regulations, through which public administration, in addition to the legislature, participates in the administration of public affairs. Public administration thereby basically supplements and shapes the content of its activity, particularly on the autonomous administration level, where it sets and specifies general rules of behavior. In addition to this, the administration of public affairs also has the power to punish, and thus, subsequently, to enforce the rules of behavior set out by the legislature and perhaps supplemented by public administration, or to punish the breach thereof. Criminal law, to which the field of administrative punishment is often compared, does not give the criminal law enforcement authorities the option of issuing their own legal regulations; it “only” enables them to punish. Public administration thus constitutes a relatively specific system in which administrating (in the narrower sense), issuing legal regulations, and punishing are combined.

The purpose of administrative punishment is, first of all, to ensure the smooth and trouble-free dispensation of public administration. Administrative punishment

¹ As such, it is defined in Art. 1 (1) of Act No. 500/2004 Coll., the Administrative Code, as amended. Under it, “this law regulates the procedure applied by the bodies of executive power, the bodies of self-government, and other bodies, legal entities and natural persons who are dispensing powers within the scope of public administration (hereinafter ‘administrative body’).” Because administrative punishment is a dispensation of powers in the area of public administration, its administrators are involved under the term (legislative abbreviation) “administrative body”.

² According to Act No. 60/1961 Coll., On Tasks of National Committees in Securing the Socialist Order, administrative bodies imposed “measures” for misdemeanors. Act No. 200/1990 Sb., On Misdemeanors, introduced “penalties” that could be imposed for committed misdemeanors. Act No. 250/2016 Coll., On Liability for Misdemeanors and Proceedings Regard Them, gives administrative bodies the right to impose “administrative punishments”.

³ According to Art. 4 of Act No. 251/2016 Coll., On Certain Misdemeanors, a misdemeanor may be committed if the perpetrator breaches an obligation set out in the legal regulations of municipalities and regions (i.e., in statutes and generally binding ordinances), for which a fine may be imposed of up to CZK 100,000.

serves to enable public administration to dispense the administration of public affairs, and to ensure that such dispensation is not disrupted or jeopardized. It has a distinct protective function. However, the fact cannot be disregarded that administrative punishment is, in and of itself, a dispensation of public administration and an expression thereof. In this case, it is not an auxiliary instrument in order to achieve a certain objective, but rather, administrative punishment is the objective in and of itself. Public administration, through its system of punishment, oversees compliance with legal regulations and a balanced state within society and within the social relationships being administrated. Administrative punishment enables those who have violated rules of behavior to be punished. Not only does that facilitate the further dispensation of administrative activity, but other areas are also affected. Therefore, through administrative punishment, public administration protects itself as well as administrated subjects and objects.

2. Evolution and concept of administrative punishment

The fact that administrative bodies can also participate in the execution of punitive authority and punitive powers, in the broader sense, in addition to the criminal law enforcement authorities and (criminal) courts, has had, within the circumstances and environment of the Czech Republic, a relatively longstanding tradition.⁴ Thus, in addition to criminal acts, we also encounter the (even more extensive) area of so-called administrative offenses and the role of administrative bodies.

A possible question is whether this does not cause a conflict with the traditional concept of separation of powers and the key role of (independent) courts in punishment,⁵ as punishment is, in the given regard, being implemented by the executive branch (and by administrative bodies, which, conceptually, are not independent, as they are to protect and promote the public interest). On the other hand, in the case of administrative punishment, there is a guarantee of independent (and *ex post*) checking and protection implemented by the judicial branch, or

⁴ The beginning can be found within the period of the so-called police state, when the General Criminal Code on Crimes and Punishments of 1787 defined the term “administrative offense”. The penalization of administrative offenses was entrusted to the so-called political (administrative) authority, unlike that for criminal offenses, which the courts were entrusted to handle. Such fact, and the establishment of a dualism between administrative offenses and criminal acts, was confirmed by the Criminal Code of 1803 and subsequently also the Criminal Code of 1852.

⁵ Also, according to Art. 40 (1) of the Charter of Fundamental Rights and Freedoms, “only the court decides on guilt and punishment for criminal acts”.

administrative justice system.⁶ However, that brings about a relatively paradoxical situation.⁷

Administrative punishment and its administrative regulation have undergone a relatively lengthy evolution through the course of history. In the Czech Republic, there was no unified concept passed, under which illegal actions (under public law) would be dealt with exclusively by the courts, but rather, another branch, which was parallel, to a certain extent, in the form of administrative punishment was created, or maintained.

Thus, in the course of time and further evolution, a fundamental question arises, focusing on the said nature or purpose of administrative punishment. The question consists in whether 1) in the case of administrative punishment it is necessary to place more emphasis on its connection to the field of public administration, and the fact that public administration, besides its other functions, also punishes, and thus administrative punishment can be considered a specific punitive power created for the conditions and needs of public administration, or 2) whether, in the case of administrative punishment, such a punitive nature is actually foremost, and that the key factor is that this is punishment as such, whereby such punishment has not been (for a number of objective or subjective reasons)⁸ entrusted to the courts, but rather, specifically to public administration and administrative bodies.

While administrative law theory⁹ rather tends to perceive administrative punishment as an integral part of public administration, the case law of administrative courts is based upon the idea that the issue of who conducts the punishing (whether it is a court or an administrative body) is not as significant as the fact that it is indeed a case of punishing and the dispensation of punitive authority. Thanks to that, administrative punishment comes into a close relationship with judicial punishment, the criminal acts system, and liability for criminal acts. In my opinion, such a view can be characterized, simply put, with the likening that punishment

⁶ Art. 6 (1) of the Convention for the Protection of Fundamental Human Rights and Fundamental Freedoms or Art. 36 (2) of the Charter of Fundamental Rights and Freedoms.

⁷ We may note the fact that while criminal proceedings on crimes take place, after the investigation phase, exclusively before the courts (on two, or, exceptionally, three levels), proceedings on administrative offenses are conducted in administrative proceedings before administrative bodies (on two levels) and subsequently are entrusted for review (not for repeated hearing) to administrative courts (also on two levels, because in the administrative justice system, according to Art. 3 of Act No. 150/2002 Coll., the Code of Administrative Justice, as amended, the authority is held by the regional courts (of which there are eight) and the Supreme Administrative Court).

⁸ Such reasons may include, for example, the fact that, in the case of administrative offenses, the level of harmfulness to society as compared to criminal acts is lesser; that, in the case of administrative offenses, it is necessary to guarantee material specialization and expertise, and that proceedings before administrative bodies are quicker, less expensive and more effective.

⁹ In regard to this, see P. Průcha, *K pojetí správněprávní odpovědnosti a správního trestání. Správní právo*, vols. 1–2, Praha 2014, pp. 16–27.

as such constitutes the common roots and trunk of one and the same tree, whereby such a tree has two main branches, which are criminal acts and administrative offenses. At the same time, the branch of administrative offenses is, itself, further internally segmented. Thus illustrative example can be supported with case law.¹⁰

While the field of criminal acts is internally unified, as the basis for criminal liability is a criminal act, the situation is different in the area of administrative punishment, where the basis for liability is an internally complex area of administrative offenses. If we disregard the fact that in the Czech Republic there is no definition in the law of the term “administrative offence”,¹¹ we can base our considerations upon its theoretical definition. According to such a definition, an administrative offense is an “illegal action by a liable person, the characteristics of which are set out in the law and with which the law associates a threat of punishment imposed by an administrative body”.¹² It is evident that this is a very broad definition, the reason being the individual specifics and particularities of various types of administrative offenses. The multitude of individual administrative offenses is not the result of recent times, but rather, of a smoother and continuous evolution in this area since the 19th century, whereby there was a gradual emergence of new areas of activity of public administration and the handling of illegal actions by way of administrative punishment associated therewith. As a result of relatively turbulent developments after the fundamental changes after 1989 and an absence of attempts at a comprehensive solution for administrative punishment, it happened that there was a hypertrophy of administrative offenses and administrative punishment.

¹⁰ The Supreme Administrative Court, in a judgment dated 27 October 2004, file no. 6 A 126/2002, stated that “penalization for administrative offenses must also be subject to the same regime as penalization for criminal acts”. In a judgment dated 23 October 2008, file no. 8 Afs 17/2007, the Supreme Administrative Court stated that “the punishability of administrative offenses is governed by similar principles as the punishability of criminal acts”. In a judgment dated 31 October 2008, file no. 7 Afs 27/2008, the Supreme Administrative Court concluded that “the category of administrative offenses is a category of criminal law in the broader sense of the word, and thus, the obligation of an administrative body to examine not only the fulfillment of the formal characteristics of an administrative offense, but also whether the action shows the given level of harmfulness to society, and thus the material aspect of an administrative offense, shall apply not only to misdemeanors, but to all administrative offenses”.

¹¹ Art. 41 of the Code of Administrative Justice uses the term “administrative offense”, but perceives it as an umbrella term and a legislative abbreviation, as the provision in question indicates a greater number of types of administrative offenses. According to such a provision (and for the purposes of the Code of Administrative Justice), an administrative offense is understood to mean a misdemeanor, a disciplinary offense or another administrative offense.

¹² P. Mates et al., *Základy správního práva trestního*, 7th ed., Praha 2017, p. 33.

3. Reasons for passing new (and unifying) legal regulations

As indicated above, over the course of time, administrative offenses no longer played merely a marginal role, and it was found that they were a more numerous and more extensive group than criminal acts. The latest legislative work has shown that the definitions of specific administrative offenses are spread out over more than several hundred laws. The true problem was not so much the relatively large number of definitions of individual administrative offenses, but more so the fact that there was a lack of any certain unifying line, or legal regulation, both in terms of substantive rules, as well as procedural. That brought about a number of further questions, including what the mutual links and relationships between the individual types of administrative offenses actually are.

Administrative offenses, in view of the fact of who the perpetrator could be (as well as in view of other component circumstances, such as, primarily, the issue of fault), were divided into two basic branches, these being misdemeanors and so-called other administrative offenses. This classification was reflected in the substantive as well as procedural regulations, in those cases where there were any.

In the case of misdemeanors, these were expressly named, and, in part also (in terms of substantive and procedural rules) codified administrative offenses. The basic regulation for these was Act No. 200/1990 Coll., On Misdemeanors. Such a legal regulation, being a *lex generalis*, had to be interpreted along with over 250 special laws (*lex specialis*), which contained the individual particulars of misdemeanors and possible particularities in terms of substantive or procedural law issues. Precisely this was a reflection of the notorious “departmentism”, whereby there was no certain unifying line, for example, in the set-up of individual penalties, as far as the types and quantification of these were concerned, as well as the length of deadlines for commencement or termination of proceedings. It was typical for misdemeanors, although this did not apply without any exception whatsoever, that their perpetrators were natural persons within the scope of their “regular” lives (i.e., not in the conducting of business activity) and liability for misdemeanors was based upon the (negligent or intentional) fault of such natural persons. It was absolutely key for such actions, or such a definition, to be expressly designated by the law as a “misdemeanor”. If the term “misdemeanor” was not used, it could not be a misdemeanor, even if it fulfilled all of the other characteristic attributes as such generally stated above. The consequence in regard to misdemeanors was that the Act No. 200/1990 Coll., On Misdemeanors contained the general substantive and procedural regulations applicable unless a special law provided otherwise. However, it must be noted that the legal regulations on misdemeanor proceedings were not comprehensively set out by the said misdemeanors act, but rather com-

prised only special provisions, whereby subsidiarily, misdemeanor proceedings were conducted according to the Administrative Code.

A much more extensive group of administrative offenses comprised the so-called other administrative offenses. The word “other” was applied entirely purposely, the reason being in order to differentiate from misdemeanors. These were those administrative offenses that were not designated as being misdemeanors, or could not even be designated as such, due to their perpetrator being natural persons engaging in business or legal entities. It was not impossible for a so-called other administrative offense to also be committed by a natural person not conducting business, such as an owner of a certain item who breached a public law obligation. Among the so-called other administrative offenses, theory included disciplinary offenses, procedural offenses, as well as administrative offenses of legal entities and natural persons conducting business. It is evident, even from such a generally indicated enumeration, that this was an internally non-homogenous group.

Specifically, in the sphere of the so-called other administrative offenses, fragmentation was fully visible in that, unlike in the case of misdemeanors, there was an absence of at least a partially unifying general legal regulation. There were a multitude of categories of administrative offenses to be encountered, and the mutual relations among them were not always entirely clear. In regard to that, we must add the inadequacy of the legal regulations of some administrative offenses, which had to be reacted to in practice by way of the (questionable) method of analogy and also opened up a great space for case law to shape the legal regulations in terms of the lack of provisions or to even transform them.

As far the procedural aspect is concerned, the situation was even more complicated in that the so-called other administrative offenses were also heard within administrative proceedings, but according to the Administrative Code directly. Nevertheless, the Administrative Code in the Czech Republic — and here we can see the difference compared to current Polish legal regulations — did not expressly regulate proceedings on administrative offenses, or did not regulate the particularities thereof. The mission of the Administrative Code was and is to be a general procedural regulation subsidiarily applicable to all possible proceedings on rights and obligations within the sphere of public administration. Nevertheless, proceedings on administrative offenses have, due to their penal nature, certain particularities. However, the Administrative Code did not reflect these, which, in the case of other administrative offenses, was a problem, unlike in the case of misdemeanors. It must be noted that nothing has changed as regards the general role of the Administrative Code and this fact continues to apply.

The fact that for both the sphere of misdemeanors and for other administrative offenses, there is a lack of more comprehensive legal regulations, was fully utilized by case law, which attempted to cover express flaws in the legal regulations specifically by emphasizing the related penal nature of administrative offenses and their

“proximity” to criminal acts and the legal regulation thereof. It was specifically case law whose influence and conclusions assisted the relevant bodies in practice so that they could work within the legal regulatory vacuum. Nevertheless, from a long-term standpoint, not even case law can take the place of the necessary activity of the legislature. In addition, the course of time, as well as the previously unsuspected contexts, primarily in regard to the right to a fair trial (and the expression thereof), proved that proceedings on administrative offenses are not a simple, informal and quick process, as may have been intended at one time in the past in regard to (some) administrative offenses.

4. New system of administrative offenses and new legal regulations

The flaws of the previous legal regulations as indicated above led the legislature to pass new legal regulations. The goal was to conduct a simplification of the fragmented category of administrative offenses.

On 1 July 2017, a reform (perhaps, though, rather a re-codification) of administrative punishment, and thus a significant part of the so-called criminal administrative law, came into force. It is comprised of three laws. First of all, this includes Act No. 250/2016 Coll., On Liability for Misdemeanors and Misdemeanor Proceedings (hereinafter Act No. 250/2016 Coll.), which is of a general nature. Secondly, this also includes Act No. 251/2016 Coll., On Certain Misdemeanors. This law contains, as its title indicates, only “several” specific definitions of misdemeanors, which had previously been contained within a special section of the previous Act No. 200/1990 Coll., On Misdemeanors. Thirdly, this includes the transitional Act No. 183/2017 Coll., whose purpose it was to primarily adapt the previous legal regulations (which includes about 250 laws) and to expressly eliminate those provisions of special laws that would go against the new regulations, or could continue to constitute an unjustified deviation.

Although it could seem at first glance, in view of the term “misdemeanor” being used, that the impact of the said laws falls only upon the narrower field comprising the so-called misdemeanor law and will in no way be reflected in the sphere of the so-called other administrative offenses, this is actually not so, both *de jure* as well as *de facto*.

A significant consequence of the new legal regulations is primarily a conceptual change in viewing the system of administrative offenses as a whole. As of 1 July 2017, such a system has become significantly simpler as compared to the previous, rather fragmented situation. There were many potential problems in the area of administrative punishment, whereby the new legal regulations address

a number of them in a manner that is basically simple; this being the unification of a predominant portion of the so-called other administrative offenses under the substantive and procedural regime of misdemeanors.¹³

When searching for an answer to the question of why it was specifically misdemeanors that were applied as the basis for inspiration, we should consider the fact that the legal regulation of misdemeanors, contained in (the now repealed) Act No. 200/1990 Coll. was, as regards substantive law and procedural aspects, indeed truly more comprehensive, there was already relatively plentiful case law in regard to it, and thus there was something to build upon. In my opinion, the new legal regulations are an overall logical result of the previous situation, practice, and case law.

Administrative offenses can, even currently, be divided up into misdemeanors (i.e., named administrative offenses) and the so-called other administrative offenses. Nevertheless, the second mentioned category includes “only” “marginal” procedural administrative offenses and disciplinary administrative offenses, which have a limited personal scope and are distinctive. Everything else that previously comprised a relatively plentiful and mixed sphere of the so-called other administrative offenses falls, as of 1 July 2017, under the unifying term and system of misdemeanors.

Disciplinary administrative offenses and procedural administrative offenses remain unaffected by the impact of the reform/re-codification of administrative punishment. All other administrative offenses should be renamed and designated as a misdemeanor, and they should also be assessed as such in terms of substantive law aspects, as well as heard as such in terms of procedural aspects. Not only does the basic category of misdemeanor as a designated and “codified” administrative offense remain, but it is also considerably strengthened.

The indicated absorption of a significant part of the so-called other administrative offenses by the misdemeanors category shows a unifying view and the elimination of a dissimilarity that was not always entirely justifiable. Even just for this reason alone, the new legal regulations can be considered broadly positive, as they have eliminated many unfounded and problematic deviations. That strengthens the legal certainty and predictability that should be associated especially with the field of administrative punishment in view of its specific nature. Understandably, selected particularities, given primarily in view of the person of the perpetrators (i.e., legal entities and business persons), had to be maintained in the new legal regulations. Thus, the legal regulations are not fully unified in the sense of all substantive and procedural provisions of the law on liability for misdemeanors

¹³ In regard to the term and new legal definition of a misdemeanor, see Art. 5 of Act No. 250/2016 Coll. According to it, “A misdemeanor is an illegal act, harmful to society, that is expressly designated in the law as a misdemeanor and which bears the characteristics as set out by law, provided that it is not a criminal act”.

and proceedings regarding the same being applicable to all misdemeanors and all perpetrators. The new legal regulations and the benefits thereof consist in the fact that the rules are contained in a single “main” law, which eliminates primarily the risk of a “legal vacuum” and such being filled out through the (problematic) route of analogy.

Below, we focus on a brief outline of some changes that the new legal regulations, contained in Act No. 250/2016 Coll., have brought about. The innovations, as well as the whole of the legal regulations, can be divided up into substantive law aspects and procedural law aspects.

5. Liability for misdemeanors

The substantive law aspect of misdemeanors is regulated in Art. 1 to 59 of Act No. 250/2016 Coll. and covers the fundamentals of liability for a misdemeanor, or its inception and expiration, as well as the consequences of liability for misdemeanors, these being administrative penalties¹⁴ and protective measures.¹⁵ Because a misdemeanor can be committed by persons over the age of 15 who do not yet have full legal capacity, as Czech law generally conditions full legal capacity upon having reached the age of 18, the legal regulations set out certain particularities in regard to the liability and punishment of these so-called minors.¹⁶

Because the term “misdemeanor” has become much broader and much more complex, as it has absorbed certain previously (relatively) separate administrative offenses, the legal regulations had to bear in mind the possible particularities. That, for that matter, is also reflected in the systematic scheme of the legal regulations, which differentiates between the subjective liability of a natural person over the age of 15 not engaging in business,¹⁷ the objective liability of a natural person

¹⁴ An administrative penalty that can generally be imposed for a misdemeanor, is, according to Art. 35 of Act No. 250/2016 Coll., a reprimand, a fine, an activity ban, forfeiture of an item, and (anew) the publication of the decision on the misdemeanor.

¹⁵ According to Art. 51 of Act No. 250/2016 Coll., a type of protective measure is a restrictive measure and seizure of an item. Restrictive measures consist in a ban on visiting publicly accessible places, or places where sporting, cultural and other social events take place, or in the obligation to refrain from contact with a certain person or group of people, or in the obligation to submit to an appropriate program for handling aggression or violent behavior.

¹⁶ As far as the substantive law aspect is concerned, the particularity is reflected in the fact that, generally, the upper limit for a fine is decreased to one half and cannot exceed CZK 5,000. As far as the procedural aspect is concerned, the particularity is reflected in the obligatory participation of an authority for the social and legal protection of minors and the statutory representative in the misdemeanor proceedings, including their right to submit an appeal for the benefit of the minor (Art. 96 (1)(c) of Act No. 250/2016 Coll.).

¹⁷ Art. 13 to 19 of Act No. 250/2016 Coll.

engaging in business,¹⁸ and the objective liability of a legal entity,¹⁹ including their legal successors.²⁰

A new provision is the punishability of an attempted misdemeanor.²¹ However, this is not so globally, but rather, only in exhaustively listed cases, similarly to the establishment of the liability of an organizer, abettor and collaborator.²²

In terms of the expiration of liability for a misdemeanor, the legal regulations endeavor to unify the previously fragmented regulations by setting out a general system and duration of the time after the elapse of which a misdemeanor cannot be heard.²³

The new legal regulations have brought about an entirely new type of punishment, this being the publication of the decision on the misdemeanor.²⁴ In such a case, this type of administrative punishment can only be imposed in certain exhaustively defined cases, and not in general.

The enumeration of individual criteria in terms of assessment when imposing administrative punishments has been specified, as far as the type and quantification are concerned.²⁵ A significant innovation is the concept of an exceptional reduction in the amount of a fine.²⁶

If we look at the actual form and structure of the legal regulations, the indicated changes show a very clear inspiration in criminal law, or the Criminal Code No. 40/2009 Coll., as amended. In the given regard, the legal regulations have basically brought about that which theory and case law have already extrapolated previously. Nevertheless, in terms of the administrative bodies, the existence of explicit legal regulations is certainly a positive aspect. The clear and evident approximation of the legal regulations of administrative punishment to criminal punishment may turn out to be a disadvantage, as this understandably also brings about increased demands upon the bodies and persons responsible for application. For that matter, the new legal regulations address this issue as well.²⁷

¹⁸ Art. 22 and 23 of Act No. 250/2016 Coll.

¹⁹ Art. 20 and 21 of Act No. 250/2016 Coll.

²⁰ According to Art. 33 (1) and Art. 34 (1) of Act No. 250/2016 Coll., liability for a misdemeanor passes to the legal successor of a legal entity or of a natural person engaging in business.

²¹ Art. 6 of Act No. 250/2016 Coll.

²² Art. 23 (4) of Act No. 250/2016 Coll.

²³ According to Art. 30 (a) of Act No. 250/2016 Coll., such a period is one year, but in the case of misdemeanors for which the law prescribes a fine level of more than CZK 100,000, such a period is three years.

²⁴ Art. 50 of Act No. 250/2016 Coll.

²⁵ Art. 36 to 40 of Act No. 250/2016 Coll.

²⁶ Art. 42 of Act No. 250/2016 Coll.

²⁷ After the expiration of the transitional period as of 31 December 2022, misdemeanors will be able to be heard and decided upon only by persons: a) with a Czech university law degree, b) persons with any type of university degree, but having passed a special “misdemeanor exam”, or persons over the age of 50 with 10 years of experience in the field of misdemeanors (Art. 111 and Art. 112 (9) of Act No. 250/2016 Coll.).

6. Misdemeanor proceedings

The new legal regulations do not affect the fact that proceedings in misdemeanor matters are administrative proceedings, because the decisions made therein concern rights and obligations in the field of public administration. General administrative procedure is set out in the Administrative Code, which is a *lex generalis*. The particularities of administrative proceedings on misdemeanors are set out in Art. 60 to 102 of Act No. 250/2016 Coll., which is a *lex specialis*. The new legal regulations are much more intensely connected with the Administrative Code than the previous regulations were.

As far as the procedural aspect is concerned, the regulations set out in Act No. 250/2016 Coll. are not conceived in a coherent or comprehensive manner, but rather, specifically and fragmentarily. Without knowledge of the Administrative Code and its systematic organization, such regulations are, at first glance, brief and perhaps even confusing. I will expressly focus on certain selected innovations that these legal regulations bring.

The possibility of so-called motioned misdemeanors, that is, misdemeanor proceedings not commenced *ex offio*, but rather, on the basis of requests, was abandoned. Anew, all misdemeanors are commenced and heard *ex officio*.²⁸

The new legal regulations distinctly brought about a strengthening of the procedural rights and procedural position of the person accused of a misdemeanor, who is provided with the option of requesting for an oral hearing to be ordered.²⁹ The administrative body is not obligated to comply with such a request.

A relatively substantial power is the option of preventing an accused legal entity, for the duration of the misdemeanor proceedings being conducted, from carrying out its dissolution, termination, or transformation. Administrative bodies have thus acquired the option of a relatively invasive encroachment upon the life of such a legal entity.³⁰ The purpose was to react to certain cases in practice where, before a decision was made, a legal entity was (entirely purposely and quickly) terminated and there was no one to punish. The demand for the speed and economy of procedure has brought about the option of abbreviated types of proceedings.³¹

²⁸ Art. 78 of Act No. 250/2016 Coll. Exceptions can be found, when certain persons grant consent to the commencement or continuation of proceedings.

²⁹ Art. 80 (2) of Act No. 250/2016 Coll., according to which the accused must be informed of the option of requesting for an oral hearing regarding a misdemeanor to be ordered, if this is necessary for the exercise of such a person's rights.

³⁰ Art. 84 of Act No. 250/2016 Coll.

³¹ The option of issuing an order or order sheet according to Art. 90 to 92 of Act No. 250/2016 Coll.

An entirely new concept, once again modeled on criminal law, is that of settlement.³² This consists in the perpetrator and the party having been harmed by the misdemeanor entering into a settlement agreement, the basis of which is, among other things, an admission to having committed the action, the compensation of the damage caused, and the payment of a certain monetary amount for publicly beneficial purposes. In this regard, it is entirely evident that the traditional unilateral and authority-based handling of misdemeanors is being abandoned.

The indicated approximation clearly shows that the new legal regulations are characterized by a greater degree of formalization. That brings about practical implications. Administrative bodies will have to justify their decisions all the more carefully. For that matter, the express requirements regarding the form and content of decisions on misdemeanors have also increased.³³

7. What else may we expect with administrative punishment?

Above we have briefly, and rather as just an overview, indicated some of the specific changes and shifts in the existing legal regulations of administrative punishment, or misdemeanors, that have occurred effective from 1 July 2017.

The legal regulations are conceived as being independent, but as far as the procedural aspects are concerned, they are linked to the application of the Administrative Code. In my opinion, this is an appropriate arrangement, whereby the common substantive and procedural issues of misdemeanors are dealt with by primary law. In other matters, the proceedings are handled according to the general legal regulations. I do not believe that it would be an adequate solution to create a specific section within, for example, the Administrative Code. The Administrative Code is predominantly a procedural regulation, while misdemeanors have both a substantive as well as a procedural aspect.

However, in my opinion, this is not, and cannot be, a final arrangement of the legal regulations of administrative punishment, or approach to such. As much as the new legal regulations presented primarily by Act No. 250/2016 Coll. should be welcomed and assessed as positive, there are nevertheless a number of issues — including those indicated in the text above — that have remained outside of the scope of the legal regulations.

First and foremost, the legislature has not addressed the relationship of the system of liability for administrative offenses in regard to liability for criminal acts.

³² Art. 87 of Act No. 250/2016 Coll. We should add that it will not be possible to handle every misdemeanor in this manner, but will be possible primarily for those whose defining characteristic is the causing of material damage and compensation thereof.

³³ Art. 93 of Act No. 250/2016 Coll.

No conceptual solution has been adopted; on the contrary, it has been inspired by the Criminal Code in many regards, in that certain concepts have been borrowed. This can lead to a situation in which two similar systems will exist (and basically already do exist) alongside one another. In my opinion, the legislature should have thought more thoroughly about whether to continue in the hypertrophy of administrative punishment, or whether a different arrangement might be appropriate.

The new legal regulations undoubtedly constitute a qualitative shift, but still within the dimensions of the previous approach and arrangement. A positive aspect is the streamlining of the system of administrative offenses and the passing of unifying substantive and procedural regulations. The reinforcement of the role of the accused is another positive aspect. This may, though, bring about complications in the event of possible obstructions or abuse of the law, which, as far as misdemeanors are concerned, is relatively common in the Czech Republic.

A possible negative aspect may, paradoxically, be the greater complexity and extensiveness of the legal regulations, which understandably brings along greater demands upon the persons applying the legal regulations in practice, particularly as far as the need for a proper and convincing justification is concerned. Another possible negative factor, associated with the procedural aspect, is the issue of judicial review, which is carried out within the administrative justice system. The basis for this is the interpretation of Art. 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, whereby misdemeanors can, thanks to the so-called Engel criteria, be considered criminal charges. Thus, the consideration suggests itself as to what the role of the administrative courts should be and whether the checking or reviewing role of the administrative justice system is sufficient.

This is a further reason as to why it may be expected that debates regarding the concept of administrative punishment in the Czech Republic will not subside. Perhaps they will also be supported by the new legal regulations, which will allow for the focus to be put on conceptual problems and ambiguities of a “higher quality” than issues caused by their absence and inadequacy.

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